

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA DE LA O, et al.,

Plaintiffs,

v.

ROBIN ARNOLD-WILLIAMS, et al.,

Defendants.

NO. CV-04-0192-EFS

**ORDER ENTERING RULINGS
FROM DECEMBER 20, 2006,
HEARING**

MARIA FERNANDEZ, et al.,

Plaintiffs,

v.

DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, et al.,

Defendants.

[NO. CV-05-0280-EFS]

A hearing was held in the above-captioned matter on December 20, 2006. Counsel appeared on behalf of the parties, as reflected in the Minutes (Ct. Rec. 512). Before the Court were State Defendants' Second Motion for Summary Judgment (Ct. Rec. 249), Defendants Mattawa, Esser, Blackburn, and Jensen's (hereinafter collectively, "Mattawa Defendants") Motion for Summary Judgment (Ct. Rec. 395), and Mattawa Defendants' Motion to Strike (Ct. Rec. 494). After reviewing the submitted materials

1 and relevant legal authority and hearing oral argument, the Court is
2 fully informed; this Order serves to supplement and memorialize the
3 Court's oral rulings on these motions and another motion heard without
4 oral argument.

5 **I. Plaintiffs' Motion to Dismiss Defendant Town of Mattawa's
Affirmative Defense and Counterclaim under RCW 4.24.510 (Ct. Rec. 391)**

6 This motion was filed on November 13, 2006; and no response was
7 filed. The Court considers the failure to file an opposition as consent
8 to entry of an adverse ruling under Local Rule 7.1(h) (5) and **grants** the
9 motion; Town of Mattawa's RCW 4.24.510 affirmative defense and
10 counterclaim are dismissed.

11 **II. Mattawa Defendants' Motion to Strike (Ct. Rec. 494)**

12 Mattawa Defendants ask the Court to strike Exhibits 5, 6, 7, 8, 17,
13 25, 31, 35, 38, and 43 on the grounds that each of these exhibits are
14 and/or contain inadmissible hearsay; Mattawa Defendants also submit there
15 is no foundation for Exhibits 5 and 8. In addition, Mattawa Defendants
16 ask the Court to strike a number of paragraphs from Plaintiffs' Statement
17 of Facts (Ct. Rec. 418). The Court selects not to address the requests
18 to strike the Statements of Fact because these are more appropriately
19 treated as contentions to the Plaintiffs' facts. In determining whether
20 genuine issues of material fact exist, the Court will not consider
21 hearsay or other inadmissible evidence. Therefore, the Court denies as
22 moot part of this motion.

23 For the reasons given on the record, the Court denies Mattawa
24 Defendants' motion to strike Exhibits 5, 7, 25, 31, 35, 38, and 43, but
25 grants in part the motion, striking Exhibits 6 and 8. The Court denies
26

1 as moot the request to strike Exhibit 17 because this request was
2 withdrawn.

3 **III. Summary Judgment Motions**

4 **A. Facts**

5 On December 18, 2006, Plaintiffs and the Mattawa Defendants
6 submitted a Joint Statement of Facts (Ct. Rec. 510). In ruling on the
7 motion for summary judgment, the Court considered these facts, as well
8 as the submitted affidavits, deposition transcripts, declarations, and
9 exhibits, and the Factual Background set forth in the Order Entering
10 Rulings from November 2, 2006, Hearing (Ct. Rec. 511), and all reasonable
11 inferences therefrom in the light most favorable to Plaintiffs, the party
12 opposing the motions. See *United States v. Diebold, Inc.*, 369 U.S. 654,
13 655 (1972) (*per curiam*).

14 **B. Standard**

15 Summary judgment is appropriate where the documentary evidence
16 produced by the parties permits only one conclusion. *Anderson v. Liberty*
17 *Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). The party seeking summary
18 judgment must demonstrate there is an absence of disputed issues of
19 material fact to be entitled to judgment as a matter of law. FED. R. CIV.
20 PROC. 56(c). In other words, the moving party has the burden of showing
21 no reasonable trier of fact could find other than for the moving party.
22 *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A material issue
23 of fact is one that affects the outcome of the litigation and requires
24 a trial to resolve the parties' differing versions of the truth." *Lynn*
25 *v. Sheet Metal Worker's Intern. Ass'n*, 804 F.2d 1472, 1483 (9th Cir.
26 1986) (quoting *Admiralty Fund v. Hugh Johnson & Co.*, 677 F.2d 1301, 1306

1 (9th Cir. 1982). The court is to view the facts and draw inferences in
 2 the manner most favorable to the non-moving party. *Anderson*, 477 U.S.
 3 at 255; *Chaffin v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

4 A burden is also on the party opposing summary judgment to provide
 5 sufficient evidence supporting his claims to establish a genuine issue
 6 of material fact for trial. *Anderson*, 477 U.S. at 252; *Chaffin*, 186 F.3d
 7 at 1213. “[A] mere ‘scintilla’ of evidence will be insufficient to
 8 defeat a properly supported motion for summary judgment; instead, the
 9 nonmoving party must introduce some ‘significant probative evidence
 10 tending to support the complaint.’” *Fazio v. City & County of San
 11 Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson*, 477
 12 U.S. at 249, 252).

13 **C. State Defendants' Second Motion for Summary Judgment (Ct. Rec. 249)**

14 The Court ruled on the majority of the issues raised in State
 15 Defendants' Second Motion for Summary Judgment at the November hearing.
 16 (See Ct. Rec. 511.) However, two issues were set for this December
 17 hearing: whether Plaintiffs' 42 U.S.C. § 1985(3) conspiracy cause of
 18 action and punitive damages request survive summary judgment.

19 1. 42 U.S.C. § 1985(3): Civil Conspiracy

20 State Defendants ask the Court to dismiss Plaintiffs' 42 U.S.C. §
 21 1985 conspiracy claim against Mr. Harden, Ms. Clawson, Mr. Bumford, Mr.
 22 Coyne, Mr. Vargas, and Mr. Ditzel. Given that this motion was filed
 23 prior to the Court resolving the 42 U.S.C. § 1983 claim, State
 24 Defendants' first argument was that there was no § 1985(3) conspiracy
 25 claim given that there is no § 1983 deprivation, relying upon *Caldeira
 26 v. County of Kauai*, 866 F.2d 1175, 1182 (9th Cir. 1989). Because the

1 Court previously found there exists a question of fact as to whether
2 State Defendants deprived Plaintiffs of their constitutional rights, the
3 Court finds State Defendants' first argument unpersuasive.

4 State Defendants' next argument is Plaintiffs cannot establish that
5 any deprivation of a legally-protected right was racially-motivated. In
6 response, Plaintiffs submit they presented sufficient evidence of racial
7 animus to survive summary judgment.

8 Civil liability for conspiracy is established by 42 U.S.C. §
9 1985(3), which provides:

10 If two or more persons in any State or Territory conspire or
11 go in disguise on the highway or on the premises of another,
12 for the purpose of depriving, either directly or indirectly,
any person or class of persons of the equal protection of the
laws, or of equal privileges and immunities under the laws; .
. . in any case of conspiracy set forth in this section, if one
13 or more persons engaged therein do, or cause to be done, any
act in furtherance of the object of such conspiracy, whereby
another is injured in his person or property, or deprived of
having and exercising any right or privilege of a citizen of
the United States, the party so injured or deprived may have
an action for the recovery of damages occasioned by such injury
or deprivation, against any one or more of the conspirators.

17 The Supreme Court set forth four factors that a plaintiff must establish
18 in order to prove a violation of § 1985(3):

19 (1) a conspiracy, (2) for the purpose of depriving . . . any
20 person or class of persons of the equal protection of the laws,
or of equal privileges and immunities under the laws; and (3)
an act in furtherance of this conspiracy; (4) whereby a person
22 is either injured in his person or property or deprived of any
right or privilege of a citizen of the United States.

23 *United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S.
24 825, 828-29 (1983). The second element is two-pronged: a plaintiff must
25 identify a legally-protected right and "demonstrate a deprivation of that
right motivated by 'some racial, or perhaps otherwise class-based,

1 invidiously discriminatory animus behind the conspirators' action'."
 2 *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (quoting
 3 *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971)). The Ninth Circuit
 4 emphasized that a plaintiff must produce evidence of a "'an agreement or
 5 'meeting of the minds' to violate constitutional rights.'" *United*
 6 *Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540-41 (9th
 7 Cir. 1989) (en banc) (quoting *Fonda v. Gray*, 707 F.2d 435, 438 (9th Cir.
 8 1983)). "To be liable, each participant of the conspiracy need not know
 9 the exact details of the plan, but each participant must at least share
 10 the common objective of the conspiracy." *Phelps Dodge*, 865 F.2d at 1541;
 11 see also *Mendocino Env'tl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301
 12 (9th Cir. 1999).

13 The Court previously found genuine issues of material fact exist as
 14 to whether Plaintiffs' Fourth Amendment right to be free from
 15 unreasonable searches and seizures was violated (see Ct. Rec. 511), and
 16 the Court finds the same to be true as to whether Plaintiffs were subject
 17 to undue scrutiny because of their race. Therefore, a question of fact
 18 exists as to whether Plaintiffs were deprived of legally-protected rights
 19 for purposes of the § 1985(3) conspiracy claims. Upon review of the
 20 correspondence between the State Defendants and the actions taken by
 21 them, the Court finds Plaintiffs presented sufficient evidence to create
 22 a genuine issue of material fact as to whether there was a meeting of the
 23 minds to deprive Plaintiffs' of their right to be free from unreasonable
 24 searches and seizures and undue scrutiny.¹ Furthermore, the Court finds
 25

26 ¹ However, the Court concludes the evidence does not create a
 ORDER ~ 6

1 a triable issue of fact exists as to whether these alleged deprivations
2 were due to Plaintiffs' race. The Court recognizes that simply because
3 the official action had more of an impact on Latina provides due simply
4 to the ratio of Latina to Caucasian providers in Mattawa at this time is
5 insufficient to create a triable issue of fact as to whether the
6 investigation was motivated by the providers' race. See *Village of*
7 *Arlington Heights v. Metro Housing Development Corp.*, 429 U.S. 252, 266
8 (1977). Yet, given the involvement of INS agents and law enforcement
9 with only Latina-provider "visits" and the circumstances surrounding
10 these "visits," the Court finds a jury should determine whether State
11 Defendants' conduct violated 42 U.S.C. § 1985(3). Therefore, State
12 Defendants' motion is denied in part.

13 2. Punitive Damages against Individually-Named Defendants

14 State Defendants also ask the Court to dismiss Plaintiffs' request
15 for punitive damages against the individually-named Defendants because
16 Plaintiffs cannot show that these Defendants' conduct was motivated by
17 evil motive or intent, or involved reckless or callous indifference to
18 federally protected rights of others. The Court previously granted
19 qualified immunity to Defendants Boness, Smith, Hoezee, and Harden; the
20 Court finds it appropriate to dismiss the punitive damages claims against
21 these individuals as well. However, as to Defendants Clawson, Bumford,

23 triable issue of fact as to whether Kenneth Harden was part of this
24 alleged conspiracy. Mr. Harden's involvement in the investigation was
25 very limited. Accordingly, the Court **grants** State Defendants' motion to
26 dismiss the § 1985(3) cause of action as to Mr. Harden.

1 Vargas, Ditzel, and Coyne, the Court finds a question of fact exists for
 2 the jury, at this stage, as to whether punitive damages are appropriate.

3 **D. Mattawa Defendants' Motion for Summary Judgment (Ct. Rec. 395)**

4 Mattawa Defendants ask the Court to dismiss (1) Plaintiffs' § 1983
 5 cause of action because the Mattawa Defendants did not personally
 6 participate in or direct the alleged violations of the Plaintiffs'
 7 constitutional rights and (2) Plaintiffs' § 1985 cause of action because
 8 there is no evidence that the Defendants conspired with anyone to violate
 9 the Plaintiffs' Equal Protection rights.

10 1. 42 U.S.C. § 1983
 11

12 Plaintiffs assert two violations of § 1983² against the Mattawa
 13 Defendants: (1) the Mattawa Defendants initiated an investigation based
 14 on race and (2) violated Plaintiffs' Fourth Amendment rights to be free
 15 from unlawful searches and seizures. As explained at the hearing, the
 16 Court finds triable issues of fact exist as these two claims, and thus

17
 18 ² Every person who, under color of any statute, ordinance,
 19 regulation, custom, or usage, or any State or Territory or the District
 20 of Columbia, subjects, or causes to be subjected, any citizen of the
 21 United States or other person within the jurisdiction thereof to the
 22 deprivation of any rights, privileges, or immunities secured by the
 23 Constitution and laws, shall be liable to the party injured in an action
 24 at law, suit in equity, or other proper proceeding for redress.
 25
 26

1 the jury will determine whether Plaintiffs are successful on their § 1983
2 claims.

3 2. 42 U.S.C. § 1985(3): Civil Conspiracy

4 Mattawa Defendants argue Plaintiffs cannot establish that these
5 Defendants violated 42 U.S.C. § 1985(3) by conspiring with Defendants
6 Bumford, Coyne, Clawson, Vargas, and Ditzel because Plaintiffs cannot
7 establish that the Mattawa Defendants were personally involved in the
8 investigation at issue. Plaintiffs contend the evidence shows the
9 Mattawa Defendants initiated a race-based investigation and continued to
10 ensure that the investigation was continued, thereby violating 42 U.S.C.
11 § 1985(3), along with the State Defendants.

12 Similar to the § 1983 cause of action, the Court finds genuine
13 issues of material fact exist as to whether Mattawa Defendants' conduct
14 deprived Plaintiffs of the equal protection of the laws or of equal
15 privileges and the immunities under the laws. See *United Bhd. of*
16 *Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 828-29
17 (1983). In addition, given the evidence viewed in the light most
18 favorable to Plaintiffs, the Court finds genuine issues of material fact
19 exist as to whether the Mattawa Defendants, in conjunction with the State
20 Defendants, conspired to deprive Plaintiffs of these protected rights due
21 to Plaintiffs' race and whether there was an act taken in furtherance of
22 such alleged conspiracy. See *id.*

23 Mattawa Defendants argue Plaintiffs' § 1985(3) conspiracy claim
24 against the individual Defendants is barred by qualified immunity. The
25 Court disagrees, concluding that qualified immunity is not an available
26 defense to a § 1985(3) cause of action. Without binding precedent from

1 the Ninth Circuit, the Court finds the Eleventh Circuit's analysis sound
 2 and adopts the ruling in *Johnson v. City of Fort Lauderdale*, 126 F.3d
 3 1372, 1380 (11th Cir. 1997), that qualified immunity is not an available
 4 defense to a § 1985(3) claim. The Eleventh Circuit's rationale is that
 5 "the narrow intent element of § 1985(3) erects a significant hurdle for
 6 § 1985(3) plaintiffs, thereby obviating the need for granting public
 7 officials qualified immunity with respect to a § 1985(3) claim." *Id.* at
 8 1379-80; see also *Burrell v. Board of Trustees of Georgia Military*
 9 *College*, 970 F.2d 785, 794 (11th Cir. 1992); *Newsome v. Lee County*, 431
 10 F. Supp. 2d 1189, 1205 (D. Ala. 2006).

11 For the reasons given above, **IT IS HEREBY ORDERED:**

12 1. Plaintiffs' Motion to Dismiss Defendant Town of Mattawa's
 13 Affirmative Defense and Counterclaim under RCW 4.24.510 (**Ct. Rec. 391**)
 14 is **GRANTED**.

15 2. Mattawa Defendants' Motion to Strike (**Ct. Rec. 494**) is **GRANTED**
 16 **IN PART** (Exhibits 6 and 8), **DENIED IN PART** (Exhibits 5, 7, 25, 31, 35,
 17 38, and 43), **and DENIED AS MOOT IN PART** (requests to strike Statements
 18 of Facts and Exhibit 17).

19 3. State Defendants' Second Motion for Summary Judgment (**Ct. Rec.**
 20 **249**) is **GRANTED IN PART** (Mr. Harden as to both the § 1985(3) cause of
 21 action and punitive damages request; Mr. Hoezee, Mr. Boness, and Mr. as
 22 to punitive damages request) **and otherwise DENIED IN PART**.

23 4. Mattawa Defendants' Motion for Summary Judgment (**Ct. Rec. 395**)
 24 is **GRANTED IN PART** (Sgt. Jensen as to the § 1983 cause of action as
 25 conceded by Plaintiffs) **and otherwise DENIED IN PART**.

IT IS SO ORDERED. The District Court Executive is directed to file this Order and provide copies of this Order to counsel.

DATED this 3rd day of January 2007.

S/ Edward F. Shea

EDWARD F. SHEA

United States District Judge

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